

United States Bankruptcy Court
Eastern District of Wisconsin
Local Bankruptcy Rules Committee
Federal Court House, Room 482
December 12, 2005 at 3:00 p.m.

In attendance: Brett Pfeifer, Pete Blain, Christine Wolk, Thomas King, Honorable Margaret D. McGarity, David Asbach, Jeffrey Nordholm (Chair), John Foscatto, Mary Grossman, Christopher Austin, Larry Liebzeit and Ralph C. Anzivino (Reporter).

A quorum was present.

The minutes from the prior meeting were discussed, amended and approved.

The first item for discussion was Local Rule 9013.2(b) – Motion Practice; Required Hearings.

Dave Asbach reported that in his opinion there was nothing in BAPCPA that would require any additional hearings to be added to the Local Rules. Rather, the discussion focused on whether the Local Rules should be amended by deleting subsection (b)(7) and (b)(9) as no longer necessary. The Committee concluded that BAPCPA requires or mandates a hearing for reaffirmation agreements. Thus, subsection (b)(7) can be removed from the Local Rules. Further, it was the Committee's opinion that a separate hearing was no longer required to pay filing fees in installments. Upon motion by Dave Asbach and Seconded by Chris Austin the motion to delete subsections (b)(7) and (b)(9) from Local Rule 9013.2 was approved by unanimous consent. It was also noted that in subsection (b)(8) of the Local Rule the word "account" should be changed to "report".

Chris Austin next offered two new additions to the local rules--Local Rule 1008 and Local Rule 5005.1. LR1008 addresses the problem that with electronically filed cases the Clerk's office does not receive signatures. Local Rule 1008 provides that the user's login and password shall serve as the registered user's signature for electronically filed documents. Local Rule 5005.1 addresses the issue of retaining electronically filed documents that contain original signatures. The proposed rule establishes a 5-year period coincident with the criminal statute of limitations. Current Local Rule 5005.1 which addresses faxes will be renumbered to Local Rule 5005.2. Upon motion by Chris Austin and seconded by Larry Liebzeit to adopt LR 1008, LR 5005.1 and renumber the current 5005.1 to 5005.2, the motion passed by unanimous consent.

Next, LR 3015 was discussed with emphasis on plan modifications that are immaterial. Thomas King noted that current practice is that immaterial changes to a Chapter 13 plan has generally not caused notices to be sent if no one is detrimentally affected. He further noted that the local rules should conform to current practice. It was noted that the costs or these types of notification would be very high. Further, the clerk's office is also in favor of consistency between local practice and the local rules. The committee agreed

with the foregoing comments, and asked Thomas King to draft a local rule for the next meeting.

The next topic was discharge declarations. Jeff Nordholm prepared a memorandum of discussion that was disseminated to the Committee. In general, the issues on discharge declarations are whether a discharge declaration is necessary in the various chapters, and if so, what should the discharge declaration contain. In general, there are three common considerations that must be resolved before the grant of a discharge: (1) domestic support obligations; (2) the debtor's eligibility for discharge--no other discharge has been granted within the prohibited period; and (3) 522(q) disclosures/disqualifications.

On domestic support obligations, it was noted that such obligations can arise before and during the bankruptcy case. It was further noted that in Chapters 12 & 13 cases, which are significantly longer than chapter 7 cases, the notice requirement on dso's becomes very significant.. It was noted that in Chapter 11, that the domestic support obligation can be covered at the confirmation hearing. The Committee was also concerned that only those debtors that have a domestic support obligation should be burdened with the reporting requirement. After discussion, there was consensus that a local rule would be needed for domestic support obligations for Chapter 12 and 13. Jeff Nordholm agreed to draft such rule.

Regarding eligibility, it was noted that prior to BAPCPA, current practice did not require any declaration on eligibility. Did BAPCPA change this practice? The Committee concluded that there did not appear to be any reason to believe that the prior practice has changed. Chapter 13 trustees will continue to check the records to determine eligibility, and the US trustee's office will continue to check in Chapter 7 cases for eligibility. It was noted that the Chapter 13 trustees will check the eligibility issue on the front end of the case. In sum, the committee concluded that no declarations were required on the eligibility issue.

The last declaration issue is the 522(q) disclosures/disqualifications. Item #3 in the First Amended Standing Order¹ addresses the 522(q) issue for in Chapter 7 cases. Interim Bankruptcy Rule 1007(b)(8) addresses the issue for in Chapter 11, 12, and 13 cases. The Committee agreed to incorporate item #3 of the First Amended Standing Order as a local rule.

The last item of business was a discussion of the Model 13 Chapter Plan's status. Brett Pfeifer reported that he had sent a model plan to the subcommittee to consider and discuss. He is currently awaiting discussion of the plan. Thomas King recommended that the subcommittee meet and go through each clause for consideration. The Model Plan Subcommittee will meet Tuesday, January 10, 2006 at 3:00 p.m.

¹ In re Local Procedures to Implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, <http://www.wieb.uscourts.gov/bapcpa4i/BAPCPA.html>

The Committee chair noted that for the next full committee meeting several items to be included on agenda would be--a draft of the DSO rule; the 522(q) rule; a redraft of LR3015; and comments that should relate to the Appendix.

The next full committee meeting will be Tuesday, January 17, 2006 at 3:00 p.m.